

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

LATOYA JERNIGAN, §  
§  
Plaintiff, §  
§  
v. § CIVIL ACTION NO. 10-2744  
§  
AMBER JERNIGAN, *et al.*, §  
§  
Defendants. §

**ORDER ADOPTING MEMORANDUM AND RECOMMENDATION**

This court has reviewed the Memorandum and Recommendation of the United States Magistrate Judge signed on August 30, 2011, and has made a determination of the Magistrate Judge's recommended disposition. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C); *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). No objections have been filed. This court adopts the Memorandum and Recommendation as this court's Memorandum and Order. This court finds and concludes that the motion to dismiss should be granted and that the dismissal should be with prejudice. The dismissal with prejudice reflects a determination that further amendment would be futile. This case is a duplicative action, that includes the same constitutional and state law claims the plaintiff previously raised in *Ozene v. TDFPS*, Civil Action No. 10cv245 (S.D. Tex. 2010). In that case, as in the present case, the plaintiff alleged that Amber Jernigan submitted false statements to CPS that led to the wrongful removal of the plaintiff's daughter, T.J., Latasha Allen and Daisy Clark. That case was dismissed for failure to state a claim within the court's subject matter jurisdiction. The Fifth Circuit affirmed the dismissal. *Ozene v. Tex. Dep't of Family Protective*

*Servs.*, 405 F. App'x 922 (5th Cir. 2010). This case is appropriately dismissed under 28 U.S.C. § 1915. The other reasons for the magistrate judge's decision are further support for dismissal.

This case is dismissed, with prejudice. An order of dismissal is separately entered.

SIGNED on September 19, 2011, at Houston, Texas.



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Lee H. Rosenthal  
United States District Judge